IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.W.P. No.9355 of 2007
Date of decision: October 9,2007

Sucha Masih V. State of Punjab and others

CORAM: HON'BLE MR.JUSTICE J.S. KHEHAR
HON'BLE MR.JUSTICE SHAM SUNDER

Present: Mr. H.S.Sethi,Advocate, for the petitioner.
Mr. B.S.Chahal,Assistant Advocate General,
Punjab for respondents No.1 and 2.
Mr. Y.P.Singla, Advocate for respondent No.3.

J.S. Khehar,J. (Oral)

The petitioner approached this court by filing the instant writ petition wherein he has impugned the order of his transfer dated 31.5.2007 ( Annexure P/3). A perusal of the impugned order reveals that the petitioner was transferred from Amritsar to Rajoke in Tarn Taran. The challenge raised by the petitioner to the impugned order of his transfer was based on the policy instructions issued by the State Government on 13.04.2007 ( annexure P/1) which inter alia assert that ordinarily employees are not to be transferred when the date of their retirement on superannuation is less than two years. On the basis of the aforesaid clause contained in the policy instructions, learned counsel for the petitioner has vehemently asserted that the petitioner is to retire on attaining the age of superannuation on 31.10.2008, and as such was entitled to the benefit of the policy instructions dated 13.4.2007. Additionally, learned counsel for the petitioner placed reliance on a decision

rendered by a Division of this court in Devi Parkash Chugh V. State of Punjab and others 2006(1) RSJ 123 in order to assert that the policy instructions issued by the State Government in respect of matters of transfer were liable to be adhered to and in case they were not to be followed, appropriate reasons ought to be recorded.

When the matter came up for consideration before this court on 13.6.2007 for the first time, respondent No.3 was represented through counsel as caveator. No injunction was granted to the petitioner so as to restrain the respondents from giving effect to the impugned order of transfer dated 31.5.2007.

A joint written statement has been filed on behalf of respondents No.1 and 2 and a separate written statement has been filed on behalf of respondent No.3. For adjudicating the controversy in the instant writ petition, we have gone through the written statement filed by the official respondents, wherein in preliminary submission No.1, it is stated as under :

> " That it is submitted that the transfer orders of Respondents No.3 Sh. Jai Karan Singh, Medical Laboratory Technician Grade/1 PHC Rajoke ( Tarn Taran) was ordered against Sh. Sucha Masih, Medical Laboratory Technician Grade 1, O/o Assistant Chemical Examiner Punjab, Amritsar vide order dated 31.5.07 on compassionate grounds as the Respondent No.3 is suffering from Cervical spondylitis disease. Almost all the transfers of the petitioners as stated in CWP were made on request of the petitioner during the period of four years. Hence, the present petition is liable to be dismissed on this ground alone."

Having gone through the reasons which prompted the respondents No.1 and 2 to post respondent No.3 at Amritsar have

not been disputed by the learned counsel for the petitioner. It is,therefore, apparent that respondent No.3 was accommodated at Amritsar on medical grounds. So as to repudiate the factual position, noticed hereinabove, learned counsel for the petitioner vehemently contended that all other orders made on medical grounds expressly recorded the said factual position, whereas no such indication has been given in the impugned order by which the petitioner has been dislocated from Amritsar.

We find no justification in the instant contention of the learned counsel for the petitioner on account of the fact that the factual position narrated in the preliminary submissions has not been disputed by filing any replication thereto.

Since the impugned order of transfer has not even allegedly been made on considerations of malafide or on extraneous consideration, but pointedly to accommodate respondent No.3 on medical grounds, we are satisfied that the same constitutes justifiable reasons so as to tide over the directory conditions expressed in the policy instructions dated 13.4.2007.

For the reasons recorded hereinabove, we find no merit in the instant writ petition. The same is,accordingly, dismissed.

( J.S.Khehar )
Judge

October 9,2007 ( Sham Sunder )
sks Judge